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Form 22

SEP - 8 2010

FORM 22. Transcript Purchase Order

AT 8:30 _____ M
WILLIAM T. WALSH, CLERK

United States Court of Appeals for the Federal Circuit

Eli Lilly and Company

) Appeal from ☒ U.S. District Court for Dist. of New Jersey☐ Court of International Trade☐ Court of Federal Claims

—VERSUS—

) TRIAL COURT NO. 2:07-cv-3770-DMC-JAD

Actavis Elizabeth LLC

) CIRCUIT COURT NO. 2010-1500

TRANSCRIPT PURCHASE ORDER

(See Rules 10(b) and 11(b) of the Federal Rules of Appellate Procedure)

PART I - TO BE COMPLETED BY THE APPELLANT WITHIN 10 DAYS OF FILING OF NOTICE OF APPEAL.

When filing this form, distribute copies as follows: 3 copies to the court reporter; 1 copy to the Trial Court; 1 copy to the appellee; 1 copy retained by appellant.

A. Complete one of the following:

☐ A transcripts is not needed for the appeal☐ A transcript is already on file☒ Request is hereby made to the reporter for a transcript of the following proceedings (give particulars): Entire trial transcript is requested

Note: voir dire and closing arguments are not prepared unless specifically requested.

Note: Unless the entire transcript is ordered, appellant must attach a statement of the issues to Copies 4 and 5.

B. I certify that financial arrangements have been made with the reporter. Payment is by:

☒ Private Funds☐ Government expense (civil case). A motion for transcript has been submitted to the trial judge.SIGNED Laura Masworsky DATE 9/7/10 COUNSEL FOR Eli Lilly and CompanyADDRESS 901 New York Ave., N.W., Washington, DC 20001TELEPHONE 202-408-4000

PART II - TO BE COMPLETED BY THE COURT REPORTER

2 copies retained by the reporter; 1 copy to be transmitted to the Court of Appeals on same date transcript order is received.

Date Purchase Order received: _____

Estimated completion date: _____

Estimated number of pages: _____

I certify that satisfactory financial arrangements have/have not (strike one) been completed with appellant for payment of the cost of the transcript.

Signature and Date_____
Telephone

PART III - NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE TRIAL COURT.

(To be completed by court reporter on date of filing transcript in Trial Court and this notification must be forwarded to Court of Appeals on the same date.)

This is to certify that the transcript has been completed. _____ volumes of transcript have been filed with the Trial Court today.

Date_____
Signature

STATEMENT OF THE ISSUES

1. Should this Court reverse the trial court's decision holding the claims of the '590 patent invalid for lack of utility where (1) the trial court found that the claimed invention is useful in fact, (2) the trial court found that the '590 patent discloses how to use atomoxetine to treat ADHD, (3) the claimed invention was the subject of a Phase II clinical trial approved by the Institutional Review Board (IRB) of the Massachusetts General Hospital (MGH) and the FDA prior to the filing date of the application, and (4) Lilly had actual clinical trial data showing atomoxetine was effective in treating ADHD in humans mere months after the filing date of the application and long before the issuance of the patent?

2. Should an ANDA applicant that specifically labels its approved product only for an infringing use be permitted to avoid liability for contributory infringement on summary judgment by asserting the existence of unapproved uses for which its product is not labeled or approved, particularly where the issue turned on disputed material facts?